

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
December 9, 2003 Session

JOHN PAUL BILBY v. STATE OF TENNESSEE

Direct Appeal from the Circuit Court for Hickman County
No. 03-5029C-I Russ Heldman, Judge

No. M2003-01754-CCA-R3-CO - Filed March 9, 2004

The Appellant, John Paul Bilby, appeals the summary dismissal of his application for writ of habeas corpus. On appeal, Bilby argues that: (1) his 1989 guilty pleas were not voluntarily entered and (2) the trial court's order of summary dismissal is "void for its failure to contain a certificate, or other proof of service." Finding these issues without merit, the judgment of the trial court is affirmed.

Tenn. R. App. P. 3; Judgment of the Circuit Court is Affirmed.

DAVID G. HAYES, J., delivered the opinion of the court, in which DAVID H. WELLES and ALAN E. GLENN, JJ., joined.

John S. Colley, III, Colley & Colley, Columbia, Tennessee, for the Appellant, John Paul Bilby.

Paul G. Summers, Attorney General and Reporter; Michael Moore, Solicitor General; Elizabeth B. Marney, Assistant Attorney General; and J. William Pope, Jr., District Attorney General, for the Appellee, State of Tennessee.

OPINION

Procedural History

On February 22, 1989, the Appellant pled guilty to aggravated kidnapping, aggravated rape, and assault with intent to commit first-degree murder. As a result of these convictions, the Appellant was sentenced to an effective fifty-year sentence in the Department of Correction. The Appellant is currently incarcerated at the Turney Center in Hickman County.

On March 26, 2003, the Appellant filed a *pro se* petition for writ of habeas corpus in the Hickman County Circuit Court. On June 18, 2003, the trial court summarily dismissed the Appellant's petition finding that, even if his claim was correct, the guilty pleas would only be voidable and not void as required by *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993).

Analysis

On appeal, the Appellant argues¹ that the trial court erred in summarily dismissing his application for writ of habeas corpus because the record demonstrates that his guilty pleas were not entered voluntarily. The Appellant argues that the record does not reflect that he affirmatively waived his right against self-incrimination, as is required for a plea to be deemed knowing and voluntary. *See Boykin v. Alabama*, 395 U.S. 238, 243 (1969). As a sub-issue, the Appellant also argues that his convictions are void because he was denied due process by the trial court's failure to address a conflict in the evidence at the guilty plea hearing, resulting from the Appellant's initial statement to the police, which was read at the guilty plea hearing, "if we had sex, she was willing."

Article I, section 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief, and Tennessee Code Annotated sections 29-21-101 to -130 codify the applicable procedures for seeking a writ. While there is no statutory time limit in which to file for habeas corpus relief, Tennessee law provides very narrow grounds upon which such relief may be granted. *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). A petitioner may seek habeas corpus relief only to contest void judgments which are facially invalid because (1) the convicting court was without jurisdiction or authority to sentence a defendant or (2) the defendant's sentence of imprisonment or other restraint has expired. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993).

The issue of voluntariness of a guilty plea within the context of a habeas corpus proceeding was directly addressed in *Archer*.

[R]ecent decisions of this Court have recognized the legal historical distinction between habeas corpus relief and post-conviction relief and between void judgments and judgments that are voidable only. . . .

We have also reaffirmed that "[t]he Post-Conviction Procedure Act, T.C.A. §§ 40-30-101 to -124, provides the procedure for attacking a constitutionally defective conviction based on a guilty plea that was not knowingly and voluntarily entered, as required by *Boykin*." *Johnson v. State*, 834 S.W.2d 922, 925 (Tenn. 1992). In *Johnson*, we elaborated upon the reason for requiring collateral challenges to guilty pleas to be, in almost all circumstances, brought pursuant to the requirements of the Post-Conviction Procedure Act. Unlike assertions indicating that

¹Contained within the Appellant's brief, in addition to the two issues raised by appointed counsel, are five issues, which are presented and briefed by the Appellant proceeding *pro se*. These five issues present challenges to the summary dismissal of the habe proceeding. There is no right at trial or on appeal to "hybrid representation," *i.e.*, permitting both the defendant and counsel to participate in the defense. *State v. Burkhart*, 541 S.W.2d 365, 368 (Tenn. 1976); *Charles William Young v. State*, No. M2002-01815-CCA-R3-PC (Tenn. Crim. App. at Nashville, Feb. 18, 2004); *see also Martinez v. Court of Appeal of California*, 528 U.S. 152, 154-164, 120 S. Ct. 684, 687-692 (2000) (while a criminal defendant has a constitutional right to conduct their own defense at trial, this right does not extend to self-representation on appeal). Although no review is required, an examination of the contentions asserted reveals no error that should be considered in the interest of justice.

the convicting court was without jurisdiction to enter a judgment or a claim that a sentence of imprisonment has expired,

. . . mere proof that a trial court failed to give the accused the advice mandated does not establish that the plea was unknowing or involuntary, but, nothing else appearing, it does shift the burden of proof to the State. The State may then, by clear and convincing proof, establish that the plea was knowing and voluntary, in which event the plea will not be disturbed.

Id. at 926. Consequently, such a claim by a petitioner does not indicate that a prior conviction is void but, rather, only voidable upon satisfaction of an evidentiary burden.

Archer, 851 S.W.2d at 163.

As found by the trial court, the Appellant's contention, even if true, presents only a voidable claim. Accordingly, this issue is without merit. We also find without merit the Appellant's sub-issue of failure to address conflicts in the evidence at the guilty plea hearings. A guilty plea conviction constitutes a conviction in and of itself and is conclusive. Habeas corpus proceedings may not be employed to address or resolve claims of innocence upon an otherwise valid judgment of conviction. Again, because the Appellant's contention, even if true, would not render the judgments void, this claim is not cognizable in a habeas corpus proceeding. *Id.* at 164.

The Appellant next challenges the validity of the trial court's order dismissing his application for writ of habeas corpus. The Appellant asserts that the order "is null and void for its failure to contain a certificate, or other proof, of service." The Appellant argues that the order has no effect, as a copy was not served upon him. The Appellant has failed to show any resulting prejudice from the alleged omission. Indeed, at oral argument, it was conceded by the Appellant that there was probably no resulting prejudice. Clearly from the facts, we can determine that the Appellant was aware of and had actual notice of the order of dismissal, as his notice of appeal was filed a mere two weeks after the dismissal order was entered. This issue is without merit.

CONCLUSION

Based upon the foregoing, the Hickman County Circuit Court's order summarily dismissing the Appellant's application for the writ of habeas corpus is affirmed.

DAVID G. HAYES, JUDGE